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michele Fox

Minute Order Form (rev. 1/80)

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

Name of Assigned Judge or Magistrate Judge	George M. Marovich	Sitting Judge if Other Than Assigned Judge	
Case Number	87 C 10214	Date	June 2, 1994
Case Title	UNITED STATES V CONTINENTAL CHEMISTE CORP		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd-party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

US EPA RECORDS CENTER REGION 5



486309

DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of case listing in "MOTION" box above]
(2)	<input type="checkbox"/>	Brief in support of motion due _____
(3)	<input type="checkbox"/>	Answer brief to motion due _____ Reply to answer brief due _____
(4)	<input type="checkbox"/>	<input type="checkbox"/> Ruling on _____ set for _____ at _____ <input type="checkbox"/> Hearing
(5)	<input checked="" type="checkbox"/>	Status hearing <input type="checkbox"/> held <input type="checkbox"/> continued to <input checked="" type="checkbox"/> set for <input type="checkbox"/> re-set for 16 JUN 94 at 9:30 AM
(6)	<input type="checkbox"/>	Pretrial conf. <input type="checkbox"/> held <input type="checkbox"/> continued to <input type="checkbox"/> set for <input type="checkbox"/> re-set for _____ at _____
(7)	<input type="checkbox"/>	Trial <input type="checkbox"/> set for <input type="checkbox"/> re-set for _____ at _____
(8)	<input type="checkbox"/>	<input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Hearing held and continued to _____ at _____
(9)	<input type="checkbox"/>	This case is dismissed <input type="checkbox"/> without <input type="checkbox"/> with prejudice and without costs <input type="checkbox"/> by agreement <input type="checkbox"/> pursuant to _____ <input type="checkbox"/> FRCP 4(j) (failure to serve) <input type="checkbox"/> General Rule 21 (want of prosecution) <input type="checkbox"/> FRCP 41(a)(1) <input type="checkbox"/> FRCP 41(e)(2)
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Motion of Jacob H. Martin to dismiss him from the civil contempt proceeding is denied. Mr. Martin is directed to file an appearance so that he appears on the Clerk's mailing list.
(11)	<input checked="" type="checkbox"/>	[For further details see <input type="checkbox"/> order on the reverse of <input checked="" type="checkbox"/> order attached to the original minute order form.]
<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge/staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 460 form. <input type="checkbox"/> Copy to judge/magistrate/judge.		5 date docketed docketing dpty. initials date mailed notice mailing dpty. initials 2 JUN 94 fda
fda courtroom deputy's initials		Date/time received in central Clerk's Office

Document #

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CONTINENTAL CHEMISTE
CORPORATION AND KENNETH KASS,

Defendants.

No. 87 C 10214

Judge George M. Marovich

MEMORANDUM OPINION AND ORDER

Plaintiff, the United States of America ("United States") filed a motion for civil contempt against Defendant Jacob H. Martin ("Martin"), alleging that Martin violated the terms of the Consent Decree entered in this hazardous waste clean-up case on December 14, 1988. After complying with the Consent Decree to a certain degree, Martin now moves to dismiss himself from the motion for contempt, contending that he has satisfied his obligations under that Decree. For the following reasons, we deny Martin's motion to dismiss himself from the contempt motion.

BACKGROUND

In November of 1987, the United States filed its complaint for injunctive relief against Continental Chemiste Corporation ("Chemiste") and its former president, Kenneth Kass, pursuant to § 16 of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), alleging that Defendants engaged in the production, packaging and distribution of pesticides at 2250 West Ogden Avenue, Chicago, Illinois, in violation of various requirements of FIFRA.

On December 1, 1988, this Court entered a Consent Decree between the parties.

The Consent Decree provides that, among other things, within 12 months of the date of entry of the Decree, Chemiste "shall dispose of in accordance with the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et. seq., reformulate into a registered product or export all stocks of SMO-CLOUD and MOTH-CLOUD within its possession." (Consent Decree, paragraph 17.) In the Consent Decree, Chemiste provided the personal guarantee of its president, Jacob Martin, to ensure Chemiste's performance pertaining to the disposal of the pesticides. (Consent Decree, paragraph 18.) Martin guaranteed that if Chemiste failed to dispose of the pesticides in accordance with the Consent Decree, he would pay the full cost of their proper disposal. (Id.)

On December 2, 1992, the United States moved this Court for an order holding Chemiste and Martin in contempt for violating the terms of the Consent Decree by failing to dispose of the pesticides as required under paragraphs 17 and 18 of the Consent Decree. Furthermore, the United States sought an Order: 1) requiring Chemiste and Martin to immediately dispose of the pesticides that are subject to the Consent Decree; and 2) requiring Chemiste to pay to the United States all stipulated penalties that have accrued in accordance with paragraph 22 of the Consent Decree. On December 21, 1992, pursuant to negotiations between the United States and Martin, Martin arranged for the disposal of the pesticides from the facility. However, he refused to conduct or to pay for sampling

and testing of the facility to assess the extent of release of pesticide stocks from a fire that occurred on October 28, 1991.

DISCUSSION

When ruling on a motion to dismiss, the court must assume the truth of all well-pleaded factual allegations and make all possible inferences in favor of the plaintiff. Johnson v. University of Chicago Hosp., 982 F.2d 230, 231 (7th Cir. 1992); Gorski v. Troy, 929 F.2d 1183, 1186 (7th Cir. 1991). Dismissal may be ordered only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 43-46 (1957); Alexander v. City of Chicago, 994 F.2d 333, 335 (7th Cir. 1993). However, we are not required to ignore any facts alleged in the complaint which undermine the plaintiff's claim. Roots Partnership v. Lands' End Inc., 965 F.2d 1411, 1416 (7th Cir. 1992).

A complaint filed in federal court must contain: 1) a short and plain statement of jurisdiction; 2) a short and plain statement of the claim showing the pleader is entitled to relief; and 3) a statement of the relief sought. Fed. R. Civ. P. 8(a). The federal rules generally do not require detailed fact pleading, Early v. Bankers Life & Cas. Co., 959 F.2d 75, 79 (7th Cir. 1992), as the issue at this preliminary stage of the proceedings is not whether the plaintiff will ultimately prevail but whether the plaintiff is entitled to an opportunity to continue discovery and offer evidence to support its claims. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). With these principles in mind, we now consider the

Defendant's motion to dismiss.

Sanctions for civil contempt may be imposed to coerce obedience to a court order or to compensate the complainant for losses sustained as a result of the contumacy. Connolly v. J.T. Ventures, 85 F.2d 930, 932 (7th Cir. 1988); United States v. United Mine Workers of America, 330 U.S. 258, 303-304 (1947). A court has broad discretion to fashion a remedy based on the nature of harm and the probable effect of alternative sanctions. Id. However, to hold a party in contempt, the court must be able to point to a specific decree which sets forth in specific detail an unequivocal demand which the party in contempt violated. Stotler and Co. v. Alge, 870 F.2d 1158, 1163 (7th Cir. 1989); Ferrell v. Pierce, 785 F.2d 1372, 1378 (7th Cir. 1986) (quoting H.K. Porter Co. v. National Pesticide Prods., 568 F.2d 24, 27 (7th Cir. 1977)). The court does not have to find that the violation was willful to hold the party in contempt, see Commodity Futures Trading Comm'n v. Premex, Inc., 655 F.2d 779, 784 n.9 (7th Cir. 1981), and it may find a party in contempt if he has not been "reasonably diligent and energetic in attempting to accomplish what was ordered." American Fletcher Mortg. Co., v. Bass, 688 F.2d 513, 517 (7th Cir. 1982).

In his Motion to Dismiss, Martin contends that he has fulfilled his obligations under paragraph 17 of the Consent Decree by disposing of the stocks of the pesticides Smo-Cloud and Moth-Cloud from the Ogden Avenue building. He further maintains even if Chemiste has not fulfilled its obligations, he is not personally

liable to pay penalties to the EPA under paragraph 22 of the Consent Decree. In its response, the United States argues that Chemiste has not fulfilled its obligations because Martin did not dispose of any of the pesticide stocks until over four years had passed since the entry of the Consent Decree and because pesticide residues remain at the facility today as the result of the 1991 fire. Moreover, the United States contends that Martin should be held personally liable for the penalties stipulated in the Consent Decree under the "trust fund doctrine" or the "piercing the corporate veil doctrine."

However, for the purposes of this motion to dismiss, we need not address whether Chemiste and Martin have complied with the Consent Decree or whether Martin should be held personally liable for the penalties stipulated in the Decree. The motion before this Court only asks us to decide whether Martin remains a party to the dispute at this stage of the litigation. Since Martin provided his personal guarantee of Chemiste's performance of its obligations under the Consent Decree, we have little difficulty in deciding that Martin remains a party to the litigation.

If a Consent Decree has been violated, a court often will impose contempt sanctions on those who have guaranteed compliance with the Decree. See, e.g., Commodity Futures, 665 F.2d at 782; General Signal Corporation v. Donalisco, Inc., 787 F.2d 1376 (9th Cir. 1986); and Spallone v. United States, 493 U.S. 465 (1990). In the instant matter, both parties acknowledge that Martin gave his personal guarantee that Chemiste would comply with the Consent

Decree. As a consent decree is interpreted under general contract principles, United States v. Outboard Marine Corp. 764 F. Supp 1315, 1316 (N.D. Ill. 1991), we see no obvious construction of the Decree which would compel us to dismiss Martin from the complaint before we determine whether the Decree has actually been violated.

CONCLUSION

Defendant Jacob H. Martin's motion to dismiss himself from the United States motion for civil contempt is denied.

ENTER:


GEORGE M. MAROVICH
DISTRICT COURT JUDGE

DATED:  June 2, 1994